from examination on the ground that he had served "less than four years with a druggist or apothecary." Thereupon the relator presented his diploma, and demanded a license as a graduate of "a reputable college." His demand was refused and the relator applied to the court for a writ of mandamus requiring the board to issue him a license. *Held*, the board had no discretion to refuse to issue the license to the petitioner, and accordingly a writ should issue. *State ex rel Mauldin* v. *Matthews et al* (1908) — S. C. —, 62 S. E. 695.

The decision of the court in the principal case is in conformity with what may be called the modern doctrine, namely, that the courts can control by mandamus the actions of officers or official boards vested with discretionary power when in the judgment of the court their conclusions are against facts and therefore capricious and arbitrary. *People ex rel. E. C. T. Club* v. *State R. Com.*, 190 N. Y. 31, 82 N. E. 723; *Dental Examiners* v. *The People ex rel. Cooper*, 123 Ill. 227; *Wood* v. *Strother*, 76 Cal. 545, 18 Pac. 766, 9 Am. St. 249; *St. Louis* v. *Meyrose Mfg. Co.*, 139 Mo. 560, 41 S. W. 244. The weight of authority is still, however, that mandamus will not lie where there has been a discretionary power granted, since virtually it is a substitution of the discretion of the court for that of the officers. TAPPING, MANDAMUS, p. 66; HIGH, EX. LEG. REM., Ed 3, § 44 b; 2 SPELLING, INJ. AND EXT. REM., § 1476; AM. & ENG. ENCYC. OF LAW, Ed. 2, Vol. 19, p. 821, and cases cited. The principal case is sustained under practically identical facts by *Dental Examiners* v. *The People ex rel. Cooper*, supra, and by *State Board of Pharmacy* v. *White*, 84 Ky. 626, where the court in granting the writ, still loath to admit that the court was controlling a discretionary power, said: "If judgment is to be exercised, or the act be of a judicial character, depending upon the discretion of the power that may perform it, then a court will not interfere by means of this writ." See also *State* v. *Lutz*, 136 Mo. 633, overruling *State* v. *Gregory*, 83 Mo. 123. The principal case emphasizes the growing tendency of the courts to supervise the discretion of administrative officers, and, while still of doubtful authority, it is perfectly in line with this modern movement. 6 MICH. L. REV. 512.

MASTER AND SERVANT—INJURIES TO THIRD PERSONS—CHARITABLE CORPORATIONS.—The plaintiff was run over in the street by an ambulance of the defendant, a charitable corporation, through the negligence of the driver. *Held*, that the rule *respondeat superior* applies. *Kellogg* v. *The Church Charity Foundation* (1908), 112 N. Y. Supp. 566.

It is frequently stated that "the principle is well settled that a private charitable institution which has exercised due care in the selection of its employes cannot be held liable for injuries resulting from their negligence." 4 AM. & ENG. ANN. CAS. 104, and cases there cited. That this statement of the rule is too broad is evident from a consideration of the facts in the principal case, which, manifestly, it does not cover, and apparently it is deduced from decisions bearing on the right of one who has accepted the benefits of a charitable institution to sue for injuries sustained while in such relation to the defendant. 9 CENT. DIG., CHARITIES, p.

103. In such cases, by the great weight of authority, the action is denied, generally upon the equitable ground that one who has elected to accept the benefits of a charity thereby releases the benefactor from liability for the negligence of his servant in administering the charity. *Powers* v. *Mass. Homœopathic Hospital,* 109 Fed. 294. In the principal case the injury was sustained by an outsider, and the court applies the rule *respondeat superior,* holding that there is no difference in such cases between the defendant and any other corporation. For an extended discussion of the principles involved, see 5 MICH. L. REV., pp. 552, 662.

MUNICIPAL CORPORATIONS—ORDINANCES—CONFLICT WITH STATUTES—POLICE POWER.—Statutes of the state of Georgia prohibited the sale of intoxicating liquor and made it unlawful for any person to keep it at any public place or at his place of business. An ordinance of the city of Macon forbade, under a penalty, the maintenance of "blind tigers" and keeping on hand intoxicating liquors for the purpose of illegal sale. Plaintiffs were convicted under the ordinance and sued out writs of habeas corpus, alleging that the city was without authority to pass the ordinance, and that the ordinance was void as attempting to punish a crime already punishable under state law. *Held,* that the city was empowered to prevent the illegal sale of liquor under the general welfare clause of its charter; that the offenses punished under the ordinance were not identical with those made criminal by the statute. *Callaway* v. *Mims* (1908), — Ga. App. —, 62 S. E. 654.

Under the "general welfare" clause common to most city charters, the city may restrain, under penalty, the illegal sale, and keeping for sale, of intoxicating liquors. *In re Jahn,* 55 Kan. 694, 41 Pac. 956. Ordinances providing for such restraint are upheld under the general municipal police power. *Henderson* v. *Heyward,* 109 Ga. 373, 34 S. E. 590, 47 L. R. A. 366, 77 Am. St. Rep. 384. And according to some decisions a municipal police regulation may punish acts also made criminal by statute. *Rogers* v. *Jones,* 1 Wend. 237, 19 Am. Dec. 493. These decisions are not, however, in accord with the weight of modern authority, which holds that a municipality may not, without express legislative authority, legislate in regard to acts already covered by the criminal laws of the state. *Judy* v. *Lashley,* 50 W. Va. 628, 57 L. R. A. 413, 41 S. E. 197. The court in the principal case adopts this view and then proceeds to uphold the ordinance in question by differentiating between the offense of "keeping liquor for sale" and "keeping it at any public place or place of business," holding them to be separate acts. This distinction, though close, seems justified by the decisions, and appears to open the only way for the easy suppression of the so-called "blind-tiger," which is defined in the principal case as "a place where liquors are sold on the sly in violation of law." *Menken* v. *City of Atlanta,* 78 Ga. 668, 2 S. E. 559.

RAILROADS—DUTY TO MAINTAIN CROSSING AFTER ELEVATING TRACKS.—The defendant elevated its tracks across Sixty-third street, in compliance with an ordinance of the City of Chicago. The street was lowered five feet and